

RE: Options re FC2022 - For discussion at 4 pm

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Date: Wed, 09 Feb 2022 21:01:09 +0000

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From: Bedard, Annie (FINTRAC/CANAFE)
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Bonjour Sarah,

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Je vous fais suivre les informations et options que nous avons compilées jusqu'à maintenant pour notre discussion à 16h sur le Freedom Convoy.

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Merci et à bientôt,
Annie

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FREEDOM CONVOY 2022 and FINTRAC

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- ~ As Canada's financial intelligence unit (FIU), FINTRAC's operational mandate involves the collection, analysis, assessment and disclosure of information in order to assist in the

detection prevention and deterrence of money laundering and of the financing of terrorist activities. Separately, FINTRAC also ensures that businesses which have obligations under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act comply with those legal requirements.

- While concerns have been raised regarding the impact of the Freedom Convoy 2022 on Canadian cities and infrastructure, and regarding the actions of certain protesters, FINTRAC has not yet identified money laundering or terrorist activity financing directly related to the protest.
- Under the PCMLTFA, both money laundering and terrorist activity financing offences are defined (with reference to the Criminal Code) as are threats to the security of Canada (with reference to the CSIS Act).
- To date, the protest has largely been recognized by government officials as a peaceful, legitimate protest and it does not appear that the RCMP or CSIS have investigated criminality or threats to the security of Canada related to the protest.
- Neither the Convoy itself nor its participants have been identified by the concerned authorities as listed entities under the Criminal Code.

OPTION 1: ISSUE MESSAGE TO RE's (draft text below)

As Canada's financial intelligence unit and anti-money laundering and anti-terrorist financing regulator, FINTRAC has been monitoring events taking place in Ottawa and other cities and areas across Canada. Although these protests have been generally peaceful to date, it is possible that individuals may seek to take advantage of such events to commit criminal acts. It is also possible that legitimate businesses can be used to fund activities that are not consistent with the purpose for which they were solicited.

We would like to remind reporting entities of the importance of submitting suspicious transactions to FINTRAC in a timely fashion should you suspect that financial transactions may be related to money laundering or terrorist activity financing.

These reports are valuable in assisting Canada's police, law enforcement and national security agencies in investigating the commission or the attempted commission of an offence in Canada and abroad.

Your collaboration is greatly appreciated.

Proposed communication strategy

What	A message highlighting possible sensitivity with crowd funding as it pertain to the publish indicator: "The use of funds by a non-profit organization is not consistent with the purpose for which it was established."
Where	Posted on a slider on our public website linking to a page with full message
When	Upon Director approval
Distribution	A generic e-mail to be sent to the FINTRAC mailing informing a new posting on our website. FINTRAC mailing list (fintrac-canafe.gc.ca)

OPTION 2: DEVELOP FACT SHEET RESPECTING DUE DILIGENCE FOR NPOs

- Media and stakeholders have raised a range of questions as to Canada's attention to the risk of illicit financing, and specifically terrorist financing, through Non-Profit Organizations. FATF has also developed recommendations relevant to these questions, under Recommendation 8 which focuses on non-profit organizations (NPOs), including charities, as channels that are vulnerable to terrorist financing. Recommendation 1 also provides obligations to have a risk-based approach.
- The text of Recommendation 8 was significantly modified in 2016 to emphasize that not all NPOs are high risk and to better align the implementation of this Recommendation with the risk-based approach to focus attention on a small sub-set of higher risk NPOs.
- In its 2021 FATF follow-up report, Canada was downgraded to "partially compliant" against Recommendation 8. The Canada Revenue Agency leads on Recommendation 8 within the Canadian regime as it relates to charities and other NPOs. The Canadian emphasis on charities vs NPO's was a factor in the FATF assessment.
- FATF typologies and other research on risk, trends and methods have indicated for several years that social media, including crowdfunding, present a risk that terrorist financing risk. For example, a FATF Report from 2015 on Emerging Terrorist Financing Risks indicates that crowdfunding is vulnerable to exploitation for illicit purposes, including instances where the true purpose of the funding campaign is masked. Individuals and organizations seeking to raise funds for terrorism and extremism support may claim to be engaged in legitimate charitable or humanitarian activities. Since then, several risk, trends and methods reports have mentioned crowdfunding as a risk for TF and have included red flags and risk indicators to this effect.
- FATF also developed a Best Practices Paper on Combating the Abuse of Non-Profit Organizations (Recommendation 8) in 2015 to which CRA significantly contributed and which includes several best practices provided by the CRA.
- In 2020 and in light of the FATF Best Practices, FINCEN issued a Fact Sheet that provides guidance that clarifies for reporting entities the customer due diligence expectations for Charities and other NPOs. It noted the importance of ensuring that legitimate charities have access to financial services and that they can transmit funds through legitimate and transparent channels, especially during the current COVID-19 pandemic. It also reminded banks to apply a risk-based approach to customer due diligence (CDD) requirements when developing the risk profiles of charities and other non-profit customers. See : [FinCEN and Federal Banking Agencies Clarify BSA Due Diligence Expectations for Charities and Non-Profit Customers | FinCEN.gov](#)
- An option could be developed to provide more directed information to Canadian reporting entities as to the best practice for CDD in respect of NPOs. The US markers speak to purpose and nature of NPO, geographic location, organization structure and other key organizational and financial aspects of the entity.

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OPTION 3: MINISTERIAL DIRECTIVE

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- Under part 1.1 of the PCMLTFA, in addition to any other measures required by the Act, the Minister may, by written directive, require any reporting entity to take any measure specified in the directive with respect to any financial transaction, or any financial transaction within a class of financial transactions – in order to safeguard the integrity of Canada's financial system.
- A Directive can target financial transactions originating from or bound for any foreign state or foreign entity, that occur or are attempted in the course of their activities, or with respect

to any activity that is related to any such financial transaction or class of financial transactions (s. 11.42(1), PCMLTFA)

- ~ Only the Minister of Finance has the authority to determine when a Directive is required (s. 11.42(1))– and the Minister may order the Director of FINTRAC to communicate the directive in accordance with the Minister’s instructions (s. 11.42(3), PCMLTFA).
- ~ The Directive of the Minister may touch upon: the verification of client ID, the exercise of customer due diligence; the monitoring of financial transactions or an account; record keeping of any records; the reporting of financial transactions to FINTRAC, and compliance obligations. (s. 11.42(2), PCMLTFA)
- ~ Before issuing a directive, the Minister may take into account any circumstances that the Minister considers relevant, however the Minister may only issue a directive if:
 - o~ An international organization, body, association or collation or a grouping of states (such as the FATF) of which Canada is a member, has called on its members to take measures in relation to a foreign state or foreign entity on the ground that the states AML/ATF measures are ineffective or
 - o~ The AML/ATF measures that a foreign state, a foreign entity or an entity referred to in paragraph 5(e.1) [trust companies incorporated or formed by or under a provincial Act that are not regulated by a provincial Act] has implemented are ineffective or insufficient and, as a result, the Minister is of the opinion that there could be an adverse impact on the integrity of the Canadian financial system or a reputational risk to that system.
- ~ It should be noted that, to date, the Minister of Finance has only issued directives concerning Iran and North Korea and that it is likely that a directive concerning the U.S. could have broad implications.
- ~ The measures in a directive would also apply only to reporting entities set out in section 5 of the PCMLTFA.

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